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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

COE, SUSAN D

ART UNIT	PAPER NUMBER
1651	

DATE MAILED: 07/15/2002 14

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Applicant No.	Applicant(s)
	09/693,949	PRICE ET AL.
Examiner	Art Unit	
Susan Coe	1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01 May 2002.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-13,18-21,26 and 29-40 is/are pending in the application.

4a) Of the above claim(s) 39 and 40 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-13,18-21,26 and 29-38 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

6) Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The amendment filed May 1, 2002, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 14-17, 27, and 28 have been cancelled.
3. Claims 39 and 40 have been added.
4. Claims 1-13, 18-21, 26, and 29-40 are pending.
5. In Paper No. 7, dated September 17, 2001, applicant elected without traverse lipoic acid for species A, myristate for species B, stigmastanol for species C, mammalian cells for species D, and potato for species E. Stigmastanol is not a known potato sterol or known to be used in cell culture media. Therefore, another species, stigmasterol, was selected for examination.
6. Claims 39 and 40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7. These claims are not considered to read on the elected species because they require two lipids or fatty acids while only one fatty acid (myristate) was elected.
7. Claims 1-13, 18-21, 26 and 29-38 are examined on the merits.

#### ***Claim Objections***

8. Claim 33 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the

claim(s) in independent form. Claim 33 does not further limit claim because they both specify the same six sources for the plant peptide.

***Double Patenting***

9. Claims 1-13, 18-21, 26 and 29-38 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over all of the claims of U.S. Patent No. 6,103,529 for the reasons set forth on page 4 of the previous Office action.

The examiner acknowledges applicant's intent to file a terminal disclaimer on the indication of allowable subject matter. However, until the terminal disclaimer is filed, this rejection is still considered valid.

***Claim Rejections - 35 USC § 102***

10. Claims 1, 2, 12, 13, 26, and 33-38 are rejected under 35 U.S.C. 102(b) as being anticipated by DIFCO manual (1984) in light of Dyas et al. (Phytochemistry (1994), vol. 35, no. 3, pp. 655-660).

Applicant's claims are drawn to a cell culture media with potato derived lipids and peptides.

The DIFCO manual teaches potato based culture media (see page 690-691). This media would contain peptides and lipids. The reference does not specifically teach using this cell media to culture animal cells; however, since the composition taught by the reference is the same as the claimed composition, the reference composition would inherently have to the same cell culture ability if applicant's invention functions as claimed.

The reference also does not specifically state that the potato agar contains the sterol stigmasterol. Dyas states that potatoes contain this sterol (see Table 1). Therefore, the culture media from potato would contain this sterol.

***Claim Rejections - 35 USC § 103***

11. Claims 1-5, 8-13, 26, and 29-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over DIFCO manual (1984) in light of Dyas et al. in view of Gibco BRL Life Technologies, Gaithersburg, MD, 1993-1994 Catalogue and Reference Guide pp. 1-105 through 1-107, 1-115 through 1-116, 1-123, 4-49, 4-50, 4-61, and 4-63.

As stated above, the DIFCO manual teaches a culture medium from potato. However, the DIFCO manual does not teach adding lipoic acid or myristate to the culture medium. The Gibco catalog shows that both lipoic acid (see page 1-105) and myristate (see page 4-63) are ingredients that can be added to a culture medium. Based on this teaching, a person of ordinary skill in the art would reasonably assume that these ingredients could beneficially be added to the culture medium taught by the DIFCO manual. Therefore, an artisan of ordinary skill would have been motivated to add lipoic acid and myristate to the culture medium of the DIFCO manual.

12. Claims 1-13, 18-21, 26 and 29-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,122,469 in view of Dyas et al. (Phytochemistry (1994), vol. 35, no. 3, pp. 655-660) and Gibco BRL Life Technologies, Gaithersburg, MD, 1993-1994 Catalogue and Reference Guide pp. 1-105 through 1-107, 1-115 through 1-116, 1-123, 4-49, 4-50, 4-61, and 4-63.

US '469 teaches a culture media for animal cells that can contain peptone. It states that the peptone can be obtained from plant material (see column 7, lines 59-64). The culture medium can also contain lipids extracted from plant sources (see column 8, lines 58-63). In addition, the culture medium can contain lipoic acid (see column 6, line 4). This reference shows that plant peptides, lipids, and lipoic acid can all be used in animal cell culture media; however, the reference does not explicitly teach a single embodiment that uses all of these ingredients together. However, since all of the ingredients can be used for the same purpose, an artisan of ordinary skill in the art would reasonably expect that a combination of the ingredients would form a media capable of culturing animal cells. Therefore, a person of ordinary skill in the art would have been motivated to create a culture media containing plant lipids, plant peptides, and lipoic acid.

US '469 also does not specifically teach that potato can be used as a source of the lipids and peptides. However, it is known in the art that potatoes contain these substances; therefore, an artisan of ordinary skill would reasonably expect that potatoes could be used as a source of the lipids and peptides. Thus, a person of ordinary skill in the art would have been motivated to use potato as the plant source of the ingredients of the culture medium.

Dyas teaches that potatoes contain stigmasterol. Therefore, a medium from potatoes would inherently contain this sterol.

US '469 also does not teach adding myristate to the culture medium. The Gibco catalog show that myristate (see page 4-63) is an ingredient that can be added to a culture medium. Based on this teaching, a person of ordinary skill in the art would reasonably assume that this ingredient could beneficially be added to the culture medium taught by the US '469. Therefore,

an artisan of ordinary skill would have been motivated to add lipoic acid and myristate to the culture medium taught by US '469.

13. No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3014.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SDC

July 12, 2002



LEON B. LANKFORD, JR.  
PRIMARY EXAMINER